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Supreme Court, U. S.
FILED
1972
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# Supreme Court of the United States

OCTOBER TERM, 1972

NO. 71-1313

DR. ROBERT E. HAM, ET AL, *Petitioners*

v.

GEORGE ROMNEY, ET AL, *Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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# Supreme Court of the United States

OCTOBER TERM, 1972

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NO._____

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DR. ROBERT E. HAM, ET AL, *Petitioners*

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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*To The Honorable Judges Of The Court:*

Petitioners, DR. ROBERT E. HAM and wife, LOIS HAM; A. G. FOWLER, JR.; PETER B. REA; WELDON CHOLLETT; LAWRENCE ENNIS; and MEADOW-CREEK VILLAGE CIVIC CLUB, and in behalf of themselves and all residents, taxpayers, property owners, and persons similarly situated in Meadowcreek division or subdivision, pray that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Fifth Circuit entered in the above cause on January 11, 1972.

## OPINIONS BELOW

The opinion of the District Court for the Southern District of Texas, and the opinion of the Court of Appeals for the Fifth Circuit are printed in Appendix "A" and Appendix "B" hereto, along with the denial of the Petition For Rehearing as Appendix "C". The case was No. 71-2871 in the Court of Appeals.

## JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on December 13, 1971, Petition For Rehearing was denied on January 11, 1972. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

## QUESTIONS TO BE PRESENTED

Whether this class action is a true class action and therefore allowed to aggregate its claim to meet the amount in controversy requirement for Federal Jurisdiction.

## STATUTES INVOLVED

The Federal Rules of Civil Procedure Rule 23 (b) (2) Title 18 U.S.C., Section 1331 of United States Code and Title 12 U.S.C. §1715 2-1 and 12 U.S.C. §1702 of the United States Code concerning the Banks and Banking Laws of the United States.

## STATEMENT OF THE CASE

The Petitioners in this class action are all the residents of the Meadowcreek Subdivision of Houston, Harris County, Texas. The Meadowcreek Subdivision is located

in Southeast Houston near Pasadena and is comprised of 1,200 homes housing approximately 4,800 people. The Meadowcreek Village Civic Club is an organization comprised of the residents of the Meadowcreek Subdivision. The civic club operates on a representative structure with various areas within the subdivision divided up into sections. Each section has a leader who is responsible for the representation of the homes located within his designated section. The named Petitioner, LAWRENCE ENNIS, is president of the Meadowcreek Village Civic Club and the other Petitioners, namely DR. ROBERT E. HAM, MR. A. G. FOWLER, JR., MR. PETER B. REA, and MR. WELDON CHOLLETT, are the section leaders. MRS. LOIS HAM, also a named Petitioner, is the chairman of the women's division. It is quite evident that the Meadowcreek Village Civic Club is a well organized highly representative functioning group of residents who are actively concerned with the well being of their neighborhood. The Respondents are the ALLENDALE VILLAGE, which is an unincorporated association formed with the specific purpose of purchasing property at 6005 Allendale Road in Harris County, Texas, for the construction of a multi-unit housing project. Funding for the apartment project was made available by the HOME SAVINGS ASSOCIATION with the FEDERAL HOUSING ADMINISTRATION insuring the loan, and under the Banks and Banking Laws of the United States, namely Title 12, Section 1715z-1 of the United States Code (Supp. 1969), the FEDERAL HOUSING ADMINISTRATION agreed to subsidize seven and one-half (7-½%) percent of the total eight and one-half (8-½%) percent interest rate. This type of arrangement is commonly called a Section 236 Project. A building permit was secured from

the CITY OF HOUSTON, and the contractor, SAM KNIGHTON, was hired by ALLENDALE VILLAGE to construct the project on the site. Upon learning of the project, Petitioners immediately voiced concern to the proper administrative agencies, namely the FEDERAL HOUSING ADMINISTRATION, the U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, and the CITY OF HOUSTON. At each administrative agency, they were told that either it was too late or nothing could be done. Petitioners feeling that they have several equitable complaints about the project, have thus been forced to the recourse of pursuing an action in the Federal Courts. The suit having been filed in Federal Court in the Southern District of Texas, was dismissed on a jurisdictional question arising out of the failure to meet the jurisdictional amount of TEN THOUSAND ($10,000.00) DOLLARS. It is the question of the $10,000.00 in regards to a class action type of suit that is the subject of this appeal.

## REASONS FOR GRANTING THE WRIT

(1) This is a true class action under Rule 23 (b) (2) Federal Rules of Civil Procedure, and as such the class should be able to aggregate its claim to reach the required Constitutional amount.

A class action is allowed to aggregate its claim to reach the minimum amount requirement under 18 U.S.C., §1331. This was allowed when it was a true class action under the old Rule 23. In 1966, Rule 23 was changed and the advisory committee in Advisory Note, 39 Federal Rules Procedure at 99 said, "the amended rule describes in more practical terms the occasions for maintaining class

actions, provides that all class actions maintained to the end as such will result in judgment including those whom the Court finds to be members of the class, whether or not the judgment is favorable to the class; and refers to the measures which can be taken to assure the fair conduct of these actions".

Your Petitioners feeling that the obvious purpose of the Rule change is to eradicate the traditional and unsatisfactory categories of "true", "hybrid" and "spurious" actions and to make the class action binding upon all members of the class. If this purpose of the Rule is to be achieved, it must necessarily follow that the amount in controversy in a class action be measured by the totality of the claims involved.

The second circuit has emphatically proclaimed that one of the primary functions of the class suit is to provide a device for vindicating claims which, taken individually, are too small to justify legal action but which are of significant size if taken as a group. (*Eisen v. Carlisle In Jacquelin*, 391 F.2d 555, 563 (2nd Cir. 1968)). Therefore, under revised Rule 23, the doors of the Federal Courts should not be closed against cases which involve very substantial amounts of money simply because the individual claimants may have less than the jurisdictional amount at stake. Consequently, a denial of Federal jurisdiction might well mean that a gross wrong involving many thousands of dollars would go undressed because no individual Plaintiff would have sufficient financial stake to justify the payment of filing a fee, let alone the employment of counsel.

Viewed in this light, each action is designed to adjudicate the totality of the rights of the members of the class.

Consequently amount in controversy should and must be determined by the totality of the claims to be adjudicated. The word, "aggregation" is thus probably a misnomer. The "amount in controversy" in any class action sought to be introduced in the Federal Court system should be determined in a manner that defers to reality—by the total amount of the right which will be adjudicated in the case. Petitioners, plead that the answer was suggested by Professor Wright, to provide that "In any class action under amended Rule 23, the aggregate claims for or against all members of the class shall be regarded as a matter in controversy" Wright; Class Actions, 47 FRD 169, 184 (1969).

Section 236 projects that are authorized under 12 U.S.C. §1715z-1 provide for rental and cooperative housing for low and moderate income families. No specific approval of the local government is required for a 236 project. The sponsor provides the permits, with no hearing, and after these are obtained, only the "secretary" has a say in the halting or approving of the interest reducing payments. Your petitioners represent the residents of the Meadowcreek area. This area is notorious for poor sewerage. Under Section 236 the facilities such as water and sewerage must be adequate. Your petitioners, seek to enjoin further construction that would place even more strain upon the existing poor sewer lines. These persons feel that they have a common desire and a common need that can be redressed by the Secretary under his ability to be sued (12 U.S.C. § 1702) to right this wrong. These permits should never have been issued and no further ones should be allowed. Your Petitioners, wish to envoke the jurisdiction of the Courts of the United States to hear

their case and argument and thus grant them a right to a trial upon the merits.

## PRAYER

Petitioners pray that the Court issue the Writ of Certiorari and reverse the judgment of the Court of Appeals and determine there was jurisdiction in the hands of the District Court to hear their case.

Respectfully submitted,

PHILLIP L. CYPHERS
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## CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Petition For a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit was made by mail to the following:

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PHILLIP L. CYPHERS

## APPENDIX A

IN THE

# United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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CIVIL ACTION No. 71-H-121

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ROBERT E. HAM, ET AL.,
Plaintiffs,

v.

GEORGE ROMNEY, SECRETARY OF UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,
Defendants.

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(Filed August 9, 1971)

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## JUDGMENT

This action having come on for hearing before the Court, and the issués having been duly heard and it appearing that the motion of defendants to dismiss for want of jurisriction should be granted,

It is ordered and Adjudged that the plaintiffs take nothing, that the action be dismissed, and that the defendants, George Rommey, Secretary of the United States Department of Housing and Urban Development, et al., recover of the plaintiffs, Robert E. Ham, et al., their costs of action.

The Clerk shall file this judgment and send copies to counsel of record.

Done at Houston, Texas, this 9th day of August, 1971.

JAMES NOEL
Judge

APPENDIX B

# United States Court of Appeals
FOR THE FIFTH CIRCUIT

October Term, 1971

No. 71-2871
Summary Calendar

D. C. Docket No. 71-H-121
DR. ROBERT E. HAM, ET AL.,
Plaintiffs-Appellants,

versus

GEORGE ROMNEY, Secretary of United States Department of Housing and Urban Development, ET AL.,
Defendants-Appellees.

*Appeal from the United States District Court for the Southern District of Texas*

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the

Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

December 13, 1971

Issued As Mandate: January 19, 1972

IN THE

# United States Court of Appeals

FOR THE FIFTH CIRCUIT

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No. 71-2871
Summary Calendar*

---

DR. ROBERT E. HAM, ET AL.,
Plaintiffs-Appellants,

versus

GEORGE ROMNEY, Secretary of United States Department of Housing and Urban Development, ET AL.,
Defendants-Appellees.

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*Appeal from the United States District Court for the Southern District of Texas*

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(December 13, 1971)

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Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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*Rule 18, 5th Cir. See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5th Cir. 1970, 431 F.2d 409, Part I.

[1]See NLRB v. Amalgamated Clothing Workers of America, 430 F.2d 966 (5th Cir. 1970).

## APPENDIX C

IN THE

# United States Court of Appeals

FOR THE FIFTH CIRCUIT

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No. 71-2871
Summary Calendar*

---

DR. ROBERT E. HAM, ET AL.,
Plaintiffs-Appellants,

versus

GEORGE ROMNEY, Secretary of United States Department of Housing and Urban Development, ET AL.,
Defendants-Appellees.

---

*Appeal from the United States District Court for the Southern District of Texas*

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(January 11, 1972)

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ON PETITION FOR REHEARING

Before: Gewin, Goldberg and Dyer, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.